

ESTTA Tracking number: **ESTTA738098**Filing date: **04/05/2016**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Sogrape Vinhos, S.A.		
Entity	Sociedade por Acoes	Citizenship	Portugal
Address	Lugar de Aldeia Nova, Avintes Avintes Vila Nova de Gaia, P-4430-77 PORTUGAL		
Attorney information	Ryan A. McGonigle Hodgson Russ LLP 1540 Broadway 24th Floor New York, NY 10036 UNITED STATES rmcgonig@hodgsonruss.com, naquino@hodgsonruss.com, ipdocketing@hodgsonruss.com, nfriedma@hodgsonruss.com Phone:6462187537		

Registration Subject to Cancellation

Registration No	4300352	Registration date	03/12/2013
Registrant	New Food Corp. 3367 Hillside Avenue New Hyde Park, NY 11040 UNITED STATES		

Goods/Services Subject to Cancellation


Class 029. First Use: 2007/05/24 First Use In Commerce: 2007/05/24 All goods and services in the class are cancelled, namely: Sliced meat
Class 030. First Use: 2007/05/24 First Use In Commerce: 2007/05/24 All goods and services in the class are cancelled, namely: Bakery goods; Spices; Tortilla chips; Tortillas


Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
Fraud on the USPTO	Trademark Act section 14; In re Bose Corp., 580 F.3d 1240, 91 USPQ2D 1938 (Fed. Cir. 2009)
Priority and likelihood of confusion	Trademark Act section 2(d)


Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4427419	Application Date	03/19/2012
Registration Date	11/05/2013	Foreign Priority	NONE

		Date	
Word Mark	FERREIRA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1961/00/00 First Use In Commerce: 1968/00/00 Port wines		

U.S. Registration No.	2566400	Application Date	02/11/1999
Registration Date	05/07/2002	Foreign Priority Date	01/19/1999
Word Mark	FERREIRA PORTO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 port wine		

U.S. Registration No.	1045547	Application Date	03/14/1975
Registration Date	08/03/1976	Foreign Priority Date	NONE
Word Mark	FERREIRA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1961/00/00 First Use In Commerce: 1968/00/00 PORT WINE

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CASA FERREIRINHA		
Goods/Services	Wines		

Attachments	85573170#TMSN.png(bytes) 75638529#TMSN.png(bytes) 73046649#TMSN.png(bytes) PetCan_FerreiraFoods_4.5.16.pdf(1109994 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ryan A. McGonigle/
Name	Ryan A. McGonigle
Date	04/05/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SOGRAPE VINHOS, S.A.,

Petitioner,

Mark: FERREIRA FOODS (Word Mark)

Reg. No.: 4300352

Reg. Date: March 12, 2013

v.

NEW FOOD CORP.,

Registrant.

**PETITION FOR CANCELLATION
PURSUANT TO 15 U.S.C. § 1064(a)**

In the matter of trademark Reg. No. 4300352 for the mark FERREIRA FOODS ("Registrant's Mark) for "sliced meat" in International Class 029 and "bakery goods, spices, tortilla chips, tortillas" in International Class 030 ("Registrant's Goods"), which registration issued March 12, 2013, Petitioner, Sogrape Vinhos, S.A. (hereinafter, "Petitioner" or "Sogrape"), a *sociedade por ações* organized under the laws of Portugal and located and doing business at Lugar de Aldeia Nova, Avintes, Vila Nova de Gaia, P-4430-77, Portugal, believes that it will be damaged by the continued registration of Registrant's Mark and hereby petitions to cancel said registration pursuant to 15 U.S.C. §1064 (Trademark Act of 1946, §14).

As grounds for cancellation, Sogrape alleges the following:


1. Sogrape is the owner of the marks FERREIRA, FERREIRA PORTO, and CASA FERREIRINHA ("Petitioner's Marks")(as also identified and depicted hereinbelow in Paragraphs 5 and 6) as trademarks applied to wines ("Petitioner's Goods"), the same being directed to wholesale and retail customers.

2. Sogrape is now and for many years has been trading as and known by Petitioner's Marks, the same identifying Petitioner as the source of Petitioner's Goods.

3. Sogrape is now and for many years prior to any date which may be claimed by Registrant, engaged in the use of Petitioner's Marks on and in association with Petitioner's Goods and is the owner of the registrations and pending applications therefor, including *inter alia* those identified in Paragraphs 5 and 6 below.

4. Since long prior to any date which may be claimed by Registrant, Sogrape has been and is now engaged in the use of Petitioner's Marks on and in association with Petitioner's Goods in interstate commerce.

5. Sogrape is the owner of, *inter alia*, the following U.S. trademark registrations which are in good order and in the name of and owned by Petitioner:

MARK	REGISTRATION SERIAL NUMBER	OR	GOODS
	1045547		Port wine
FERREIRA PORTO*	2566400		Port wine
FERREIRA (Word Mark)	4427419		Port wines

*(designates an incontestable trademark registration)(copies of the foregoing registrations are attached hereto as Exhibit "A").

6. Petitioner also is the owner of the common law trademark CASA FERREIRINHA in use in U.S. commerce on wines.

7. Petitioner's Marks have been in continuous, open, and notorious use in the United States from 1968 to the present date.

8. Petitioner's Marks have been continuously and widely advertised and promoted in the United States from 1968 to the present date.

9. As a result of long use, widespread advertising and promotion, and successful sales, advertising and promotion for over forty-five (45) years, Petitioner's Marks have become distinctive and well-known and highly regarded throughout the United States, long prior to the date Registrant filed the application in issue and long prior to any date of use that may be claimed by Registrant.

10. As a result of the expenditure by Petitioner of substantial sums in establishing, maintaining, and policing Petitioner's Marks as symbols of Petitioner and its quality products, the trade and purchasing public have come to recognize Petitioner's Marks as identifying Petitioner's quality products and as indicating Petitioner as the sole source of those products.

11. Notwithstanding Sogrape's prior rights in Petitioner's Marks, Registrant applied to register FERREIRA FOODS for Registrant's Goods in International Classes 029 and 030 on March 22, 2012.

12. The application identified hereinabove in Paragraph 11 was registered on March 12, 2013 under Registration No. 4,300,352 (hereinafter, the "'352 Registration"). Sogrape seeks cancellation of the '352 Registration in its entirety.

13. For far longer than any date than could be claimed by Registrant, Sogrape has been trading and is known by Petitioner's Marks in connection with the marketing and sale of Petitioner's Goods, the same being generally related to Registrant's Goods. As such, priority is not an issue.

14. Upon information and belief, Registrant intends to distribute and sell Registrant's Goods through the same channels of trade as Petitioner, and directs its respective goods to the same ultimate consumer as Petitioner.

15. Registrant's Goods are of the sort that are typically: (i) consumed in tandem with or mixed in recipes with the goods sold by Petitioner under Petitioner's Marks; and (ii) sold by restaurants, caterers or other retail food establishments such as that which Petitioner provides under Petitioner's Marks.

16. The Petitioner's Marks and Registrant's Mark are confusingly similar when applied to the goods of the parties and Registrant's use of Registrant's Mark in connection with Registrant's Goods is without the consent or permission of Petitioner.

I. LIKELIHOOD OF CONFUSION/FALSE SUGGESTION OF A CONNECTION

17. The Petitioner's Marks and Registrant's Mark are confusingly similar when applied to the goods of the parties.

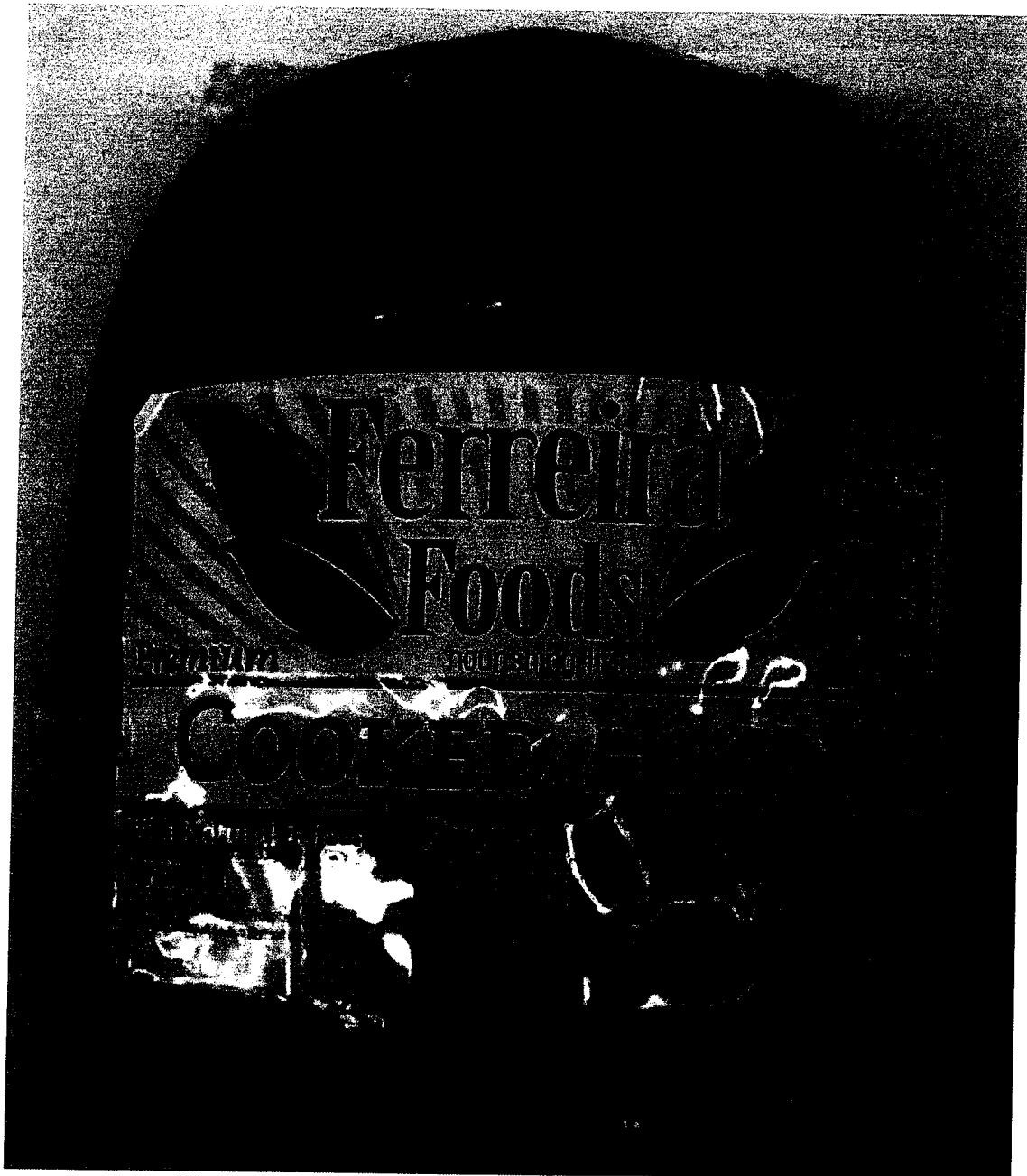
18. Since Petitioner owns Petitioner's Marks by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage Sogrape and its goodwill.

19. The continued registration of the Registrant's Mark to Registrant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Registrant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Petitioner, all to Petitioner's irreparable damage.

II. FRAUD ON THE USPTO

20. Sogrape repeats and re-alleges paragraphs 1-19 above with the same force and effect as if set forth herein at length.

21. In filing the application that led to Registrant's Mark on March 22, 2012 in International Class 029 for "sliced meat," Registrant used a specimen for a solid, processed meat product, namely:



22. The specimen demonstrating use of Registrant's Mark in International Class 029 is not a "sliced meat" product.

23. At no time prior to the filing of the application was Registrant's Mark in International Class 029 in use in U.S. commerce on "sliced meat."

24. In connection with the Class 029 portion of its application, Registrant knowingly made false material representations of fact in connection with the filing of its application.

25. The USPTO relied upon the misrepresentations made by Applicant when it published and subsequently registered Registrant's Mark in International Class 029.

26. The false and fraudulent declarations referred to above with respect to Registrant's Mark in International Class 029 was made by Registrant with actual knowledge of its falsity, and was not made on information and belief and was made by a person who knew or should have known the same was false and fraudulent.

27. As a result, Registrant willfully and knowingly perpetuated a fraud on the USPTO in connection with the Class 029 portion of its application.

28. Upon information and belief, service is proper upon Registrant as follows:

Harlan Levine, Esq.
Hoffman Polland & Furman PLLC
200 E. 42nd Street, Suite 435
New York, New York 10017

and

New Food Corp.
3367 Hillside Avenue
New Hyde Park, New York 11040

WHEREFORE, Sogrape prays that U.S. Trademark Registration No. 4300352 be cancelled and that this Petition to Cancel be sustained.

Dated: April 5, 2016

Respectfully submitted for Petitioner,
SOGRAPE VINHOS, S.A.

/Ryan A. McGonigle/

By:

Ryan A. McGonigle, Esq.
HODGSON RUSS LLP
1540 Broadway, 24th Floor
New York, New York 10036
Tel.: (646) 218-7537
Fax: (646) 218-7663

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's Petition for Cancellation by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 5th day of April 2016 to Registrant at the following address(es):

Harlan Levine, Esq.
Hoffman Polland & Furman PLLC
200 E. 42nd Street, Suite 435
New York, New York 10017

And

New Food Corp.
3367 Hillside Avenue
New Hyde Park, New York 11040

/Ryan A. McGonigle/

Ryan A. McGonigle

EXHIBIT A

United States of America
United States Patent and Trademark Office

FERREIRA

Reg. No. 4,427,419

Registered Nov. 5, 2013

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

SOGRAPE VINHOS, S.A. (PORTUGAL SOCIEDADE POR AÇÕES (S.A.))
LUGAR DE ALDEIA NOVA, AVINTES
VILA NOVA DE GAIA, PORTUGAL P-4430-77

FOR: PORT WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 0-0-1961; IN COMMERCE 0-0-1968.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,045,547 AND 2,566,400.

SEC. 2(F).

SER. NO. 85-573,170, FILED 3-19-2012.

LUCY ARANT, EXAMINING ATTORNEY



Lucy Arant
Deputy Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

FERREIRA PORTO

Reg. No. 2,566,400

Registered May 7, 2002

**Renewal Term Begins
May 7, 2012**

**10 Year
Renewal/Amended**

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

SOGRAPE VINHOS S.A. (PORTUGAL CORPORATION)
7 LUGAR DE ALDEIA NOVA, AVINTES
4400 VILA NOVA DE GAIA, PORTUGAL

FOR: PORT WINE, IN CLASS 33 (U.S. CLS. 47 AND 49).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

PRIORITY CLAIMED UNDER SEC. 44(D) ON ERPN CMNTY TM OFC APPLICATION NO. 1045111, FILED 1-19-1999, REG. NO. 1045111, DATED 3-6-2000.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PORTO", APART FROM THE MARK AS SHOWN.

THE ENGLISH TRANSLATION OF THE WORD PORTO IN THE MARK IS PORT WINE.

SER. NO. 75-638,529, FILED 2-11-1999.



David J. Kappas

Director of the United States Patent and Trademark Office

Int. Cl.: 33

Prior U.S. Cl.: 47

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 1,045,547
Registered Aug. 3, 1976
Renewal Term Begins Aug. 3, 1996

TRADEMARK
PRINCIPAL REGISTER

Ferreira



A.A. FERREIRA, S.A. (PORTUGAL CORPORATION)
RUA DA CARVALHOSA
VILLA NOVA DE GAIA, PORTUGAL,
BY CHANGE OF NAME FROM COM-
PANHA AGRICOLA E COMERCIAL
DOS VINHOS DO PORTO, S.A.R.L.
(PORTUGAL LIMITED COMPANY),
VILA NOVA DE GAIA, OPORTO,
PORTUGAL

FOR: PORT WINE, IN CLASS 33 (U.S.
CL. 47).

FIRST USE 0-0-1961; IN COMMERCE
0-0-1968.

SER. NO. 73-046,649, FILED 3-14-1975.

OWNER OF PORTUGAL REG. NO.
113748, DATED 12-14-1962.

OWNER OF U.S. REG. NO. 315,368.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Aug. 27, 1996.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 33

Prior U.S. Cl.: 47

United States Patent Office

Reg. No. 1,045,547
Registered Aug. 3, 1976

TRADEMARK
Principal Register



Companhia Agricola e Comercial dos Vinhos do Porto,
S.A.R.L. (Portuguese limited company)
Rua da Carvalho
Vila Nova de Gaia, Oporto, Portugal

For: PORT WINE, in CLASS 33 (U.S. CL. 47).
First use 1961; in commerce 1968.
Owner of Portuguese Reg. No. 113,748, dated Dec. 14,
1962; and U.S. Reg. No. 315,368.

Ser. No. 46,649, filed Mar. 14, 1975.

L. STRICKMAN, Examiner

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Mark: FERREIRA



US Serial Number: 73046649

Application Filing Date: Mar. 14, 1975

US Registration Number: 1045547

Registration Date: Aug. 03, 1976

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Mar. 01, 2016

Mark Information

Mark Literal Elements: FERREIRA

Standard Character No Claim:

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Design Search Code(s): 03.15.08 - Ibis; Storks, flamingos, heron and other long-legged waders; Herons; Flamingos; Cranes
03.15.13 - Kiwi Bird; Kiwi; Emus; Ostrich
24.09.07 - Banners; Advertising, banners

Related Properties Information

Claimed Ownership of US Registrations: 0315368

Foreign Information

Foreign Registration Number: 113748

Foreign Registration Date: Dec. 14, 1962

Application/Registration Country: Foreign PORTUGAL

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (...) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: PORT WINE

International Class(es): 033 - Primary Class

U.S Class(es): 047

Class Status: ACTIVE

Basis: 1(a) 44(e)

First Use: 1961

Use In Commerce: 1968

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: Yes	Currently 44E: Yes	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: SOGRAPE VINHOS, S.A.
Owner Address: LUGAR DE ALDEIA NOVA AVINTES
 4400 VILA-NOVA DE GAIA PORTUGAL
Legal Entity Type: CORPORATION
State or Country: PORTUGAL
Where Organized:

Attorney/Correspondence Information

Attorney Name: Ryan A. McGonigle	Attorney of Record
Attorney Primary Email Address: rmcgonig@hodgsonruss.com	Docket Number: RAM JPC Sogr
	Attorney Email Authorized: Yes
Correspondent Name/Address: Ryan A. McGonigle Hodgson Russ LLP 1540 Broadway 24th Floor New York, NEW YORK UNITED STATES 10036	Correspondent
Phone: 6462187537	Fax: 6462187663
Correspondent e-mail: rmcgonig@hodgsonruss.com lpdocketing@hodgsonruss.com nfriedma@hodgsonruss.com kcombs@hodgsonruss.com naquino@hodgsonruss.com	Correspondent e-mail Authorized: Yes
Domestic Representative Name: FROSS ZELNICK, ET AL.	Domestic Representative

Prosecution History

Date	Description	Proceeding Number
Mar. 01, 2016	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Mar. 01, 2016	REGISTERED AND RENEWED (THIRD RENEWAL - 10 YRS)	67657
Mar. 01, 2016	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	67657
Mar. 01, 2016	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	67657
Dec. 29, 2015	TEAS SECTION 8 & 9 RECEIVED	
Dec. 18, 2015	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 18, 2015	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Aug. 03, 2015	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
May 27, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
May 27, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Oct. 04, 2007	CASE FILE IN TICRS	
Aug. 24, 2006	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	60132
Aug. 24, 2006	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Aug. 24, 2006	ASSIGNED TO PARALEGAL	60132
Jun. 05, 2006	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Jun. 05, 2006	PAPER RECEIVED	
Jul. 18, 1996	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
May 24, 1996	REGISTERED - SEC. 9 FILED/CHECK RECORD FOR SEC. 8	

Mar. 08, 1982 REGISTERED - SEC. 8 (6-YR) ACCEPTED

Maintenance Filings or Post Registration Information

Affidavit of Section 8 - Accepted
Continued Use:

Renewal Date: Aug. 03, 2016

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date In Location: Mar. 01, 2016

Assignment Abstract Of Title Information

Summary

Total Assignments: 3

Registrant: COMPANHIA AGRICOLA E COMERCIAL DOS
VINHOS DO PORTO, S.A.R.L.

Assignment 1 of 3

Conveyance: CHANGE OF NAME 19890630

Reel/Frame: 0664/0811

Pages: 0

Date Recorded: Aug. 14, 1989

Supporting Documents: No Supporting Documents Available

Name: COMPANHIA AGRICOLA E COMERCIAL DOS
VINHOS DO PORTO, SOCIEDADE ANONIMA

Legal Entity Type: UNKNOWN

Assignor

Execution Date: Jul. 03, 1989

State or Country: No Place Where Organized Found
Where Organized:

Assignee

Name: A.A. FERREIRA, SOCIEDADE ANONIMA

Legal Entity Type: UNKNOWN

State or Country: No Place Where Organized Found
Where Organized:

Address: No Assignee Address Found

Correspondent

Correspondent Name: WEISS, DAWID, ET AL.

Correspondent Address: 633 THIRD AVENUE
NEW YORK, NY 10017-6703

Domestic Representative - Not Found

Assignment 2 of 3

Conveyance: MERGER

Reel/Frame: 2946/0757

Pages: 25

Date Recorded: Sep. 28, 2004

Supporting Documents: assignment-tm-2946-0757.pdf

Name: A.A. FERREIRA, S.A.

Legal Entity Type: CORPORATION

Assignor

Execution Date: Apr. 02, 2004

State or Country: No Place Where Organized Found
Where Organized:

Assignee

Name: SOGRAPE-VINHOS DE PORTUGAL, S.A.

Legal Entity Type: CORPORATION

State or Country: PORTUGAL
Where Organized:

Address: LUGAR DE ALDEIA NOVA AVINTES
4400 VILA-NOVA DE GAIA, PORTUGAL

Correspondent

Correspondent FROSS ZELNICK LEHRMAN & ZISSU, P.C.
Name:

Correspondent DIANA SULLIVAN
Address: 866 UNITED NATIONS PLAZA
NEW YORK, NEW YORK 10017

Domestic Representative - Not Found

Assignment 3 of 3

Conveyance: CHANGE OF NAME

Reel/Frame: 2947/0036

Pages: 4

Date Recorded: Sep. 28, 2004

Supporting Documents: assignment-tm-2947-0036.pdf

Assignor

Name: SOGRAPE-VINHOS DE PORTUGAL, S.A.

Execution Date: Apr. 02, 2004

Legal Entity Type: CORPORATION

State or Country PORTUGAL
Where Organized:

Assignee

Name: SOGRAPE VINHOS, S.A.

Legal Entity Type: CORPORATION

State or Country PORTUGAL
Where Organized:

Address: LUGAR DE ALDEIA NOVA AVINTES
4400 VILA-NOVA DE GAIA, PORTUGAL

Correspondent

Correspondent FROSS ZELNICK LEHRMAN & ZISSU, P.C.
Name:

Correspondent DIANA SULLIVAN
Address: 866 UNITED NATIONS PLAZA
NEW YORK, NY 10017

Domestic Representative - Not Found